

DEPARTMENT OF PLANNING

COUNTY OF MAUI

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ADOPTION OF CHAPTER 4
RULES OF THE MOLOKAI PLANNING COMMISSION
RELATING TO THE SHORELINE AREA
OF THE ISLAND OF MOLOKAI
July 31, 1991

DEPT OF PLANNING
CORRECTION

SUMMARY

1. Article III of the Rules and Regulations of the Planning Commission of the County of Maui, entitled "Shoreline Setback Rules and Regulations of the County of Maui", is repealed.

2. Chapter 4, entitled "Rules of the Molokai Planning Commission Relating to the Shoreline Area of the Island of Molokai", is hereby adopted to read as follows:

"TITLE MC-12
DEPARTMENT OF PLANNING

SUBTITLE 03
MOLOKAI PLANNING COMMISSION

CHAPTER 4

RULES RELATING TO SHORELINE SETBACKS
FOR THE MOLOKAI PLANNING COMMISSION

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SUBCHAPTER 1

GENERAL PROVISIONS

12-4-1 Title. The rules in this chapter shall be known as the "Rules of the Molokai Planning Commission Relating to the Shoreline Area of the Island of Molokai". [Eff. August 10, 1991]

12-4-2 Authority. The rules contained in this chapter are hereby established pursuant to Part III of Chapter 205A, Hawaii Revised Statutes, as amended. [Eff. August 10, 1991]

12-4-3 Purpose. One of the most important natural resources of the County of Maui is its shoreline area. Due to increasing demands for utilization of the beach and ocean resources, it is imperative that use and enjoyment of the shoreline area be insured for the public to the fullest extent possible; that natural shoreline environment be preserved; that man-made features in the shoreline area be limited to features compatible with the shoreline area; and that natural shoreline processes be protected from development. Those steps are necessary because development and other man-made improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and disturbance being caused to natural shoreline processes. Moreover, these steps are also necessary because the Hawaiian Islands are subject to tsunamis and high wave action that pose hazards to residential dwellings and other structures near the shoreline. Consequently, the purpose of this chapter is to establish shoreline area in order to protect the health, safety, and welfare of the public. [Eff. August 10, 1991]

12-4-4 Applicability. These rules shall be applicable to all lands which abut the shoreline of the island of Molokai, County of Maui, State of Hawaii, except for Kalawao County. [Eff. August 10, 1991]

12-4-5 Definitions. For the purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Authority" means the Molokai Planning Commission.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the mauka side of the lot and dividing the resulting sum by three.

"Buildable area" means the area of a lot remaining after the minimum yard setbacks have been met.

"Board approval" means approval of the Board of Land and Natural Resources pursuant to Section 183-41, HRS.

"Department" means the Department of Planning of the County of Maui.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii.

"Lot" means a designated parcel, tract, or area of land established by subdivision or as otherwise established prior to the adoption of subdivision laws, to be used, developed, or built upon as a unit.

"Minor structure" means a man-made structure which does not impede the natural movement of the shoreline.

"Nonconforming structure" means a structure which was lawfully existing within the shoreline area and which:

(a) Was completely built prior to June 22, 1970; or

(b) Received either a building permit, board approval, or shoreline area variance prior to June 16, 1989.

"Plan" means a detailed construction plan drawn to scale which shows the design of a structure proposed to be built within the shoreline area. The plan shall consist of data which include, but which are not limited to: property boundaries; natural features such as large trees, rock outcroppings, and topography in and around the proposed construction; and any other information which identifies the existing condition of the subject parcel of land. The Director of Planning may require that the plan include an accurate instrument survey of the lot as well as cross sections of the lot at designated locations to be prepared by a licensed surveyor.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves which has been certified by the Board of Land and Natural Resources within the preceding twelve months.

"Shoreline area" shall include all of the land area between the shoreline and the shoreline setback line.

"Shoreline setback line" means that line established by this chapter running inland from and parallel to the shoreline at a horizontal plane.

"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment. [Eff. August 10, 1991]

SUBCHAPTER 2

ESTABLISHMENT OF SHORELINE SETBACK LINES

12-4-6 Establishment of shoreline setback lines. (a) All lots which abut the shoreline shall have a shoreline setback line forty feet from the shoreline except as further provided by this section:

- (1) A lot which was created prior to June 16, 1989 with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline;
- (2) A lot which was created prior to June 16, 1989 with an average lot depth which is more than one hundred feet but less than one hundred sixty feet shall have a shoreline setback line forty feet from the shoreline;
- (3) A lot with an average lot depth which is one hundred sixty feet or more shall have a shoreline setback line either at one hundred fifty feet from the shoreline or at the distance from the shoreline calculated by multiplying the average lot depth of the lot by .25, whichever is the least distance from the shoreline; and
- (4) Notwithstanding any provision of this section to contrary, a lot with a buildable area which is reduced to less than fifty percent of the lot area after applying the requirements of this chapter and all other state and county requirements shall have a shoreline setback line twenty-five feet from the shoreline.

(b) Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii. [Eff. August 10, 1991]

SUBCHAPTER 3

PROCEDURES

12-4-7 Determination of the shoreline. The shoreline shall be established and certified in accordance with the procedures prescribed by the Board of Land and Natural Resources; provided that, no determination of a shoreline shall be valid for a period longer than twelve months except where the shoreline is fixed by man-made structures which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structures. [Eff. August 10, 1991]

12-4-8 Site plans. Unless otherwise required by the Director of Planning, all site plans showing the location of the shoreline and shoreline setback line of a lot shall: be drawn to the scale of 1"=20'0"; show the shoreline and existing conditions along properties immediately adjacent to the subject lot; show contours at a minimum interval of two feet; and show all natural and man-made features in the subject area. [Eff. August 10, 1991]

12-4-9 Activities subject to these rules. All structures located or proposed to be located within the shoreline area shall conform to the requirements of this chapter and all other applicable statutes, codes, ordinances, or rules or regulations. Construction immediately inland of the shoreline area shall also be subject to these rules until a certified and confirmed survey map, prepared in accordance with the provisions of Section 12-4-7 herein, is filed with the department.

12-4-10 Prohibited activities within the shoreline area. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits for the shoreline area is prohibited with the following exceptions:

(a) The taking from the shoreline area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or

(b) Where the mining or taking is authorized by a variance pursuant to these rules; or

(c) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under Section 46-11.5, HRS; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(d) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing for purposes under Section 46-12, HRS; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity. [Eff. August 10, 1991]

12-4-11 Structures. Structures are prohibited in the shoreline area without a variance pursuant to this part. A structure in the shoreline area shall not need a variance if:

- (a) It was completed prior to June 22, 1970;
- (b) It received either a building permit, board approval, or shoreline area variance prior to June 16, 1989;
- (c) It was outside the shoreline area when it received either a building permit or board approval; or
- (d) It is necessary for or ancillary to continuation of agriculture or aquaculture existing in the shoreline area on June 16, 1989;

(e) It is determined to be a minor structure by the Director of Planning which does not affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline. Minor structures shall include, but are not limited to:

- (1) Landscape features or irrigation designed to stabilize and enhance the shoreline area;
 - (2) Minor, single-storied service and recreational buildings, paved lanais, swimming pools, and beach use facilities; and
 - (3) Paved walkways for public access shall be allowed within the 25 foot shoreline area for a lot which has an average lot depth of 100 feet or less or within the 40 foot shoreline area for a lot which has an average lot depth of more than 100 feet.
- (f) Work being done which consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes; or
- (g) It is a structure which has been legally permitted and which is the subject of repairs valued at less than fifty percent of the current assessed value of the structure, which do not enlarge the structure nor intensify the use of the structure. [Eff. August 10, 1991]

12-4-12 Administration. (a) A written application for a variance shall be made in a form prescribed by the Director of Planning and shall be filed with the Director of Planning. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director of Planning to be necessary to evaluate the application. The application shall also include:

- (1) A filing fee of \$150 to cover the cost of a public hearing; provided that, the filing fee may be waived by the Director of Planning for county public agencies;
- (2) Certification from the owner or lessee of the lot which authorizes the application for variance; and
- (3) An environmental assessment in accordance with Chapter 343, HRS, and the Environmental Impact Statement Rules of the State of Hawaii.

(b) Upon a determination by the Director of Planning that an application is complete and in compliance with part III of Chapter 205A, HRS, and this chapter, the Director of Planning shall submit the application to the authority. If the application is determined to be incomplete by the Director of Planning, the Director of Planning shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director of Planning shall submit a written report, a copy of the application, and all other documents submitted on the application to the authority prior to the matter appearing on an agenda of the authority.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters in accordance with the Rules of Practice and Procedure of the authority.

(d) Exceptions. Prior to action on a variance application, the authority may waive a public hearing on the application for:

- (1) Stabilization of the shoreline erosion by the moving sand entirely on public lands;
- (2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;
- (3) Other structures or activities, provided that , no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application; For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Maui, which informs the public of the subject matter of the application, and which identifies the date and time by which a written request for a public hearing must be received by the authority; or
- (4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with the natural shoreline processes. [Eff. August 10, 1991]

12-4-13 Action by the authority. (a) A shoreline area variance may be granted for a structure or activity otherwise prohibited by this chapter if the authority finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;

- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that, the authority also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that, the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that, the authority also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.

(b) For the purposes of this section, hardship shall not include economic hardship to the applicant; county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; or as a result of any other permit or approval which may have been issued by the authority. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for the purpose of this section.

(c) No variance shall be granted unless appropriate conditions are imposed:

- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (4) To minimize adverse impacts on public views to, from, and along the shoreline. [Eff. August 10, 1991]

12-4-14 Enforcement. The Director of Public Works shall enforce these rules and regulations. [Eff. August 10, 1991]

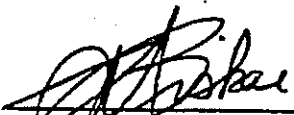
12-4-15 Penalties. Any person who violates any provision of these rules shall be subject to the penalties provided for in Chapter 205A-32, HRS. [Eff. August 10, 1991]

12-4-16 Severability. If any provision or part of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [Eff.]

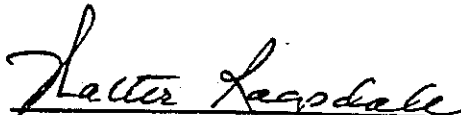
12-4-17 Amendments. Any amendments, modifications, or revisions to these rules shall be processed pursuant to the Rules of Practice and Procedure of the Molokai Planning Commission and Chapter 91, HRS. [Eff.]

ADOPTED this 22 day of August, 1990,
at Wailuku, Maui, Hawaii.

DEPARTMENT OF PLANNING



BRIAN MISKAE
Planning Director



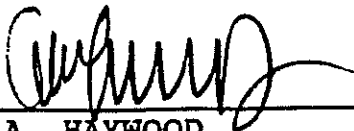
WALTER RAGSDALE, Chairman
Molokai Planning Commission



LINDA CROCKETT LINGLE
Mayor, County of Maui

Approved this 31st day of
July, 1991.

APPROVED AS TO FORM AND LEGALITY:



GUY A. HAYWOOD
Acting Corporation Counsel
County of Maui
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Received this 31st day of
July, 1991.



Clerk, County of Maui

CERTIFICATION

I, BRIAN MISKAE, Director of Planning, Department of Planning, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules Relating to Shoreline Setbacks for the Molokai Planning Commission, which were adopted by the Molokai Planning Commission on the 22nd day of August, 1990, by affirmative vote of the proper majority, following a public hearing on June 6, 1990; and

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 4th day of May, 1990 and in the Molokai News on the 1st day of May, 1990.

COUNTY OF MAUI



BRIAN MISKAE
Planning Director

